



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **9th day of August, 2004**

Applications of

**COMAIR, INC.
NORTHWEST AIRLINES, INC.
SPIRIT AIRLINES, INC.**

Docket OST-2000-7182

for exemptions from 14 C.F.R. Part 93, Subparts K and S, pursuant to 49 U.S.C. § 41718(b), Special Rules for Ronald Reagan Washington National Airport (within-perimeter slot exemptions)

**ORDER GRANTING WITHIN-PERIMETER SLOT EXEMPTIONS AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

SUMMARY

By this order, the Department grants Spirit Airlines, Inc., two slot exemptions at Ronald Reagan Washington National Airport (DCA), to provide nonstop service to Myrtle Beach, South Carolina, to be operated with Stage 3 aircraft.

BACKGROUND

On July 5, 2000, pursuant to the provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), the Department issued Order 2000-7-2, which, among other things, granted Midwest Express (now Midwest Airlines) two DCA slot exemptions to provide nonstop service to Des Moines, Iowa.

By letter dated May 14, 2004, Midwest informed the Department that it planned to discontinue that service on June 30, 2004. Given that development, the Department issued a Notice dated June 3, 2004, seeking applications from airlines using Stage 3 aircraft for the two slot exemptions formerly granted to Midwest. Applicants were notified that they must serve DCA from airports that were designated as small hub or

nonhub airports in 1997¹ within the 1,250-mile perimeter established for civil operations at DCA under 49 U.S.C. § 49109.²

Section 41718(b) of Title 49 U.S.C. establishes certain requirements for award of these exemptions. As concerns the small hub or nonhub category for within-perimeter exemptions, it directs the Secretary to distribute them in a manner that promotes air transportation: (1) to communities without existing nonstop air transportation to DCA; (2) to small communities; (3) that will provide competitive nonstop air transportation on a monopoly nonstop route to DCA; or (4) that will produce the maximum competitive benefits, including low fares.³

As a final matter, in our Notice dated June 3, we noted that Midwest's currently allocated slot times for its nonstop DCA-Des Moines service are in the 1000 and 1700 hour periods. Section 41718(c)(2) does not allow us to assign more than three slot exemptions per one-hour period. Almost all time periods were fully subscribed by the Department's Notice dated May 3, 2004, and, thus, we may not be able to accommodate airline requests for alternative slot exemption times.

APPLICATIONS

On May 21, Comair, Inc. (Comair), and on June 24, Northwest Airlines, Inc. (Northwest) and Spirit Airlines, Inc. (Spirit) each filed a request for the two slot exemptions to provide nonstop, within-perimeter DCA scheduled services, using Stage 3 compliant aircraft.

¹ Definitions of nonhub, small hub, and medium hub airports are provided under 49 U.S.C. § 41714 (h)(7), (8), and (9).

² Title 49, U.S.C. § 41718(c)(3), incorporating amendments made by P.L. 108-176 (the Vision 100 – Century of Aviation Reauthorization Act, “Vision 100”), authorizes the Department to award a total of 20 within-perimeter slot exemptions. Of these, at least six must be for air transportation to small hub and nonhub airports. See § 41718(c)(3)(a). At present, we have awarded and allocated these six as follows: two to Midwest for service to Des Moines in Order 2000-7-2; two to Comair, Inc. for either Jackson, MS, or Lexington, KY, in Order 2004-4-2; and two to US Airways, Inc. for Asheville, NC, Chattanooga, TN, or Wilmington, NC, also in Order 2004-4-2. With the return of Midwest's Des Moines exemptions, the only available category for which they may be re-awarded is for small-hub or nonhub service.

³ Prior to the amendments made by Vision 100, section 41718(b) had also included as a criterion for all awards the promotion of air transportation by new entrant air carriers and limited incumbent air carriers. Vision 100 struck that as a criterion for the small hub and nonhub service category only; it remains in effect for the medium hub and smaller category, and the “without regard to size” category. Therefore, the Department stated that it would evaluate applications for these two available slot exemptions without regard to the new entrant/limited incumbent status of the applicant(s).

A. Comair

Comair requests these two slot exemptions to provide nonstop service between DCA and Jackson, Mississippi (JAN), using Stage 3 compliant 50-seat Bombardier CRJ-200 regional jet aircraft. Comair states that JAN merits DCA service on the basis of population, economic activity, and strong communities of interest with the Washington, D.C. region.⁴ Comair notes that JAN is Mississippi's capital and largest city, and it has a metropolitan population of over 425,000. For each of these reasons, Comair urges the Department to grant its request.

B. Northwest

Northwest requests these two slot exemptions to provide nonstop service between DCA and Des Moines, Iowa (DSM), using Stage 3 compliant 44-seat Bombardier CRJ-440 regional jet aircraft, operated by a Northwest Airlink code-share partner. Northwest notes that the Department has already found that the DCA-DSM service provides competitive benefits for consumers. Northwest maintains that its strong presence at DSM will support these proposed services. Northwest states that it will be able to offer passengers and shippers numerous connecting services between DSM and DCA through Minneapolis/St. Paul, Detroit, and Memphis, providing flexible timing for departures and returns between DCA and DSM in addition to the daily nonstop service. Finally, it maintains that its presence at DCA will also support effective marketing of the proposed operations.⁵

C. Spirit

Spirit requests these two slot exemptions to provide nonstop service between DCA and Myrtle Beach, South Carolina (MYR), using Stage 3 compliant 150-seat MD-80 aircraft. Spirit states that MYR lacks daily nonstop service.⁶ Spirit notes that it is the second largest airline at MYR in terms of enplanements. Spirit states that it intends to adjust its DCA schedules so that this proposed service will connect to Detroit (and to points Spirit serves beyond Detroit), and will allow it to offer Washington passengers connections to/from the West Coast via Detroit.⁷ Spirit maintains that its proposal meets each of the § 41718(b) selection criteria. Spirit notes that it is a known, low-fare carrier, and states that its proposed operations will stimulate the DCA-MYR market and cause fares to decline.

⁴ The application notes that JAN is a center of state government, business, and medical science, and that JAN boasts a strong economic base comprising agribusiness, health care and education, high-tech industries, manufacturing, shipbuilding, petrochemical, and financial services. Application at 3.

⁵ Northwest currently provides nonstop service in the DCA-Detroit, Memphis, Milwaukee, and Minneapolis/St. Paul markets.

⁶ US Airways Express partners Chautauqua and PSA Airlines provide one nonstop round trip on Saturday and Sunday, respectively, in the DCA-MYR market.

⁷ Application at 2 and 5.

RESPONSIVE PLEADINGS

On June 30, Horry County Department of Airports (Horry County) filed in support of Spirit's request noting that the proposed service would help fill a large service void, promote continued economic growth and tourism in the region, and that the Myrtle Beach community views gaining daily nonstop service to DCA as a high priority.

On July 1, the Jackson and Mississippi Parties (JMP), Comair, Spirit, and Northwest filed responses.

A. Concerning Comair

Comair maintains that, absent slot restrictions, JAN would now receive DCA service on the basis of population, economic activity, and strong communities of interest with Washington, DC. It states that it has a demonstrated interest in and a proven record of providing small and medium sized communities with nonstop service to DCA.

JMP urges the Department to grant the request. JMP states that JAN has a critical need for nonstop service to Washington, DC, being one of only a handful of state capitals located within the 1,250-mile DCA service perimeter that does not have DCA nonstop service. JMP states that a substantial number of passengers travel between JAN and Washington, DC, and that the proposed operations would reduce round trip travel time by more than two and a half hours.

Spirit opposes the request, noting that Delta Air Lines is one of the largest slot holders at DCA. Spirit also states that Southwest Airlines now provides twice-daily nonstop service in the Baltimore-JAN market. Spirit also contends that these services can be conducted using commuter slots, not jet slots. Spirit notes that it would offer three times more capacity than Comair per slot.

Northwest opposes the request, arguing that its own proposed DSM service will provide more significant public benefits than the Comair proposal. Northwest states that unlike DSM, JAN already has low-fare, nonstop service to Baltimore provided by Southwest. Northwest maintains that DSM-Washington area traffic is about twice the size of the JAN-Washington area traffic. Northwest also notes that DCA is DSM's fourth-ranked O&D market, while DCA is JAN's eighth-ranked O&D market.

B. Concerning Northwest

Northwest argues that its request should be granted so that DCA-DSM nonstop service can continue. Northwest notes that if its request is not granted, the State of Iowa will have no nonstop service to/from the Washington area. It states that since DCA is the fourth largest O&D market for DSM passengers, continuation of the nonstop link between these two cities is critical to the growth and development of DSM and Iowa.

Comair opposes the request, asserting that rather than using its slot resources to provide small/nonhub communities with nonstop service to DCA, Northwest has chosen to lease its surplus DCA slots to other airlines. Moreover, Comair notes that on October 31, 2004, Northwest will have access to twenty-four additional DCA slots as a result of the termination of a slot lease to Delta Air Lines. As a result, Comair maintains that granting Northwest's request is not in the public interest. Comair also maintains that the demand for its DCA-JAN service will be greater than Northwest's DCA-DSM service, since Northwest is proposing to use smaller equipment than Midwest Airlines at DSM, and that the Washington area-JAN market is larger than the Washington area-DSM market.⁸

Spirit notes that Northwest has a surplus of slots at DCA, and that, therefore, the Department should not approve Northwest's proposal.⁹ Moreover, Spirit maintains that an award to Northwest would not make full or best use of "jet" slots at DCA, contending that the proposed Northwest operations can and should be operated with commuter slots.

C. Concerning Spirit

Spirit notes that it is the only low-fare carrier seeking slots in this case. Spirit states its operational record at MYR indicates that, if given the opportunity to provide the low-fare service that it has proposed here, the Washington DC area-MYR market can grow to three or four times its current size. It also notes that it is the only applicant proposing to serve DCA using large aircraft. Finally, Spirit maintains that it is the only airline in this proceeding that must have these additional slots to commence its proposed operations.

Comair opposes the request, noting that MYR is primarily a leisure market, and that MYR already receives nonstop DCA service on Saturday and Sunday.¹⁰ Comair maintains that its proposal to link the State Capital of Mississippi with the Nation's capital carries more weight and has greater public significance than Spirit's proposal. Comair also maintains that Spirit's claims regarding benefits for connecting passengers militate against Spirit's selection in this case. Finally, Comair maintains that Spirit has made less than full use of its prior award of DCA slots.

Northwest opposes the request, arguing that MYR already has DCA nonstop service, that Hooters Air provides MYR-BWI nonstop service, that AirTran provides low-fare connecting service in the DCA-MYR market, and that South Carolina already receives nonstop service between DCA and Columbia and Greenville/Spartanburg, while Iowa

⁸ Northwest is proposing to replace Midwest Airline's 88-seat Boeing 717 service with 44-seat aircraft. Comments at 5.

⁹ Spirit asserts that Northwest is using only about 58 percent of its slots at DCA. Consolidated Answer at 3.

¹⁰ However, Comair does note the substantial growth in the Washington area-MYR market provided by Hooters Air at BWI. Comments at 6.

would lose its only nonstop DCA service if Northwest is not granted an exemption in this proceeding to continue providing nonstop DSM air service.

LATE-FILED SUBMISSIONS¹¹

On July 6, Northwest filed a motion for leave to file and a reply stating that the fact that Delta leases slots at DCA from Northwest or other carriers, that Spirit does not lease such slots from other carriers, and that Northwest leases such slots out to other carriers should have no bearing on the Department's decision in this proceeding. Northwest also states that although Comair and Spirit have decided against operating the services they now propose even with previously granted slot exemptions, Northwest is committed to instituting DSM service as soon as possible.

On July 7, Spirit also filed a motion for leave to file and reply. Spirit asserts that Northwest erroneously stated that Spirit had failed to use DCA slot exemptions awarded for Myrtle Beach service. Spirit states that in fact it had requested four DCA slot exemptions and that it was forced to choose between DCA-Melbourne and DCA-Myrtle Beach service. Spirit argues that, in contrast to Northwest, it has only a few DCA slot holdings, that Spirit does not have the flexibility to lease its DCA slot exemptions that Northwest has with its DCA slots, and that Spirit did not abandon the DCA market because it requested a short extension of the FAA's use or lose requirements. Spirit argues that the DCA-Myrtle Beach market is underserved and that the large leisure traffic component of the DCA-Myrtle Beach should not be a negative factor in deciding the award of DCA slot exemptions. Spirit also argues that Northwest's large DCA slot holdings should be a competitive consideration in the Department's decision.

DECISION

All three applicants have submitted meritorious applications. Both Jackson and Des Moines¹² have argued persuasively that they could support nonstop DCA service. However, we have decided to award the two slot exemptions to Spirit to provide one nonstop round trip a day in the Myrtle Beach-DCA market because Spirit's proposal meets more of the statutory criteria than either Comair's or Northwest's.

We find that all three carriers meet two of the first three criteria. They all would serve small communities. In the cases of Comair and Northwest, they would provide service to communities without existing nonstop air transportation to DCA. In the case of Spirit, because Myrtle Beach receives one nonstop round trip a day to DCA on Saturdays and Sundays, Spirit would provide competitive nonstop air transportation on a monopoly nonstop route to DCA.

¹¹ In the interest of a complete record, we will grant the motion for leave to file.

¹² We note that carriers have been awarded slot exemptions in the past that allowed for DCA service to be provided to each community. See Orders 2000-7-2, issued July 5, 2000, and 2004-4-2, issued April 1, 2004.

When it comes to the fourth criterion -- that it produce the maximum competitive benefits, including low fares -- we find that Spirit has a decided advantage over Comair and Northwest. Both Comair and Northwest would operate regional jets (50 and 44 seats respectively). In contrast, Spirit will operate 150-seat MD-80 aircraft -- substantially increasing capacity in the market. Moreover, Spirit has a long history of providing competitive low-fare service. No party in this proceeding even attempted to dispute Spirit's assertion that it, alone among the three applicants, would compete on the basis of low fares.¹³ This factor is particularly relevant when one considers the current conditions of these three markets. We have examined the average fares in all three markets, and they are all comparable. However, the distance between Myrtle Beach and DCA is less than half the distance than either Des Moines or Jackson to DCA. Thus, on a per-mile basis, the Myrtle Beach-DCA fares are currently, on average, more than double those of the other two markets. This may be because Des Moines and Jackson have more connecting opportunities to DCA than Myrtle Beach. For example, at Des Moines, seven carriers provide connecting service to DCA over nine different hubs about 40 times a day. Similarly, Jackson passengers have about 30 connecting opportunities a day to DCA. By contrast, Myrtle Beach has only about 20 connecting opportunities a day. Whatever the reason, it is clear that Myrtle Beach-DCA has the greatest need for a competitive low-fare service.

We are also mindful of the fact that Spirit, alone among the three applicants, cannot easily commence its proposed service without the slot exemptions at issue here. Both Comair and Northwest have DCA slot holdings that would permit them to commence their proposed Jackson and Des Moines services right now, if they so chose.

CONDITIONS

Start-up:

We will require that Spirit inaugurate full service by October 31, 2004.¹⁴ If, for any reason, Spirit is not able to use the slot exemptions awarded, we request that it notify the Department as soon as possible, but not later than 30 days after the date of service of this order, so that we can reallocate them.

¹³ An examination of fare data in other markets confirms that entry by Spirit has had the effect of lowering prices in the market. Spirit entered the Detroit-Denver market during the second quarter of 2002. During the first quarter of 2002, before Spirit's entry, a total of 39,840 passengers paid an average fare of \$245. By the first quarter of 2003, after Spirit's entry, the market had grown to more than 65,000 passengers paying an average of \$143, about a 40 percent decrease in average fares for all passengers, not just those passengers flying on Spirit.

¹⁴ Midwest Airlines suspended its Des Moines-DCA service on June 30, so there is no conflict in Spirit's using those slot exemptions as early as possible.

Assignment of Slot Times:

We are directing Spirit to file in the Docket no later than seven business days from the service date of this Order, its proposed flight schedules and effective dates for inauguration of operations authorized by this order.

As we stated in our Notice of June 3, 2004, we note that 49 U.S.C. § 41718(c)(2) allows us to assign only one additional slot exemption per one-hour period, an increase from the original two per hour authorized in AIR-21. The slot exemptions that were turned back in to the Department by Midwest Airlines were being used at 1000 and 1700. In coordination with Federal Aviation Administration's Slot Administration Office, we shall assign slot times corresponding with the authority granted in this proceeding in a subsequent notice.

Thereafter, Spirit, and prior awardees as well, may request the FAA Slot Administration Office to approve temporary exchanges of the assigned slot exemptions times with other slots or slot exemptions for the purpose of conducting the operations authorized by this Order in a different hour. In acting on such a request, the FAA will employ standard practices in conjunction with applicable statutory and regulatory requirements for the utilization of slot times between and among individual air carriers. Regardless of subsequent approved slot time exchanges, the slot times assigned by the Department or the FAA's Slot Administration Office pursuant to this order will be tagged such that, if any of the service granted by this order is suspended or is not inaugurated in a timely manner, the Department will withdraw the slot exemptions based on their tagged slot time rather than by any subsequent slot time operated.

ENVIRONMENTAL ISSUES

Although 49 U.S.C. §41718(e) specifically exempts our action here from review under the National Environmental Policy Act,¹⁵ we remain sensitive to the environmental impact of increased operations at DCA. Consistent with the statute, we will require that all operations authorized by this order will be conducted with Stage 3 aircraft. Also, under 49 U.S.C. §47117(e), the Department will give DCA priority in making grants for airport noise compatibility planning and programs that qualify for Federal financial assistance.

ADMINISTRATIVE TERMS

As the FAA slot regulations make clear, "slot(s) do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time to fulfill the Department's operating needs...."

¹⁵ §41718(e) states, "Neither the request for, nor the granting of an exemption, under this section shall be considered for purposes of any Federal law a major Federal action significantly affecting the quality of the human environment."

(14 C.F.R. § 93.223(a)). Moreover, under the provisions of 49 U.S.C. § 41714(j), Spirit may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions unless otherwise authorized herein.

Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it could not otherwise operate. Spirit must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

This order is issued under authority delegated in 49 C.F.R. § 1.56(a).

ACCORDINGLY,

1. The Department grants two slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to Spirit Airlines, Inc. to enable it to provide one nonstop round trip a day in the Myrtle Beach-DCA market;
2. The Department directs Spirit Airlines, Inc. to file in Docket OST 2000-7182 no later than seven business days after the service date of this Order their proposed flight schedules and effective date for operations authorized by this Order. Further, Spirit Airlines, Inc., must commence its proposed service no later than October 31, 2004. The slot exemptions granted must be conducted with Stage 3 aircraft, may not be used for operations between the hours of 10:00 p.m. and 7:00 a.m., and may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than three operations. Spirit is advised to exercise maximum flexibility in proposed operating times to ensure compliance with these limits;
3. The Department will make the final determination of slot times as soon as possible after schedules are filed to enable the carrier to conduct the operations authorized by this Order. The Department directs the Spirit to contact the Federal Aviation Administration Slot Administration Office after the Department's determination of slot times. The FAA will assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;
4. We grant all motions to file otherwise unauthorized documents;
5. Except as otherwise granted, we deny all other applications for exemptions from 14 C.F.R. Part 93, Subparts K and S, filed in this docket;
6. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements; and

7. We will serve this order on all parties in Docket OST-2000-7182 and the Federal Aviation Administration Slot Administration Office.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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